

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
(JACKSON DIVISION)**

UNITED STATES OF AMERICA *ex rel.*  
CODY M. CHILDRESS,

Relator,

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SOUTHERNCARE, INC.

Defendant.

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) Civil Action No. 3:10-cv-00662-TSL  
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**DEFENDANT SOUTHERNCARE INC.'S MOTION TO DISMISS RELATOR'S  
COMPLAINT UNDER FEDERAL RULE OF CIVIL PROCEDURE 12(b)(5)**

Defendant SouthernCare, Inc. ("SouthernCare" or "Defendant") hereby files its Motion to Dismiss Relator's Complaint Under Federal Rule of Civil Procedure 12(b)(5) ("Defendant's Motion to Dismiss"). As discussed more fully in the Memorandum in Support, filed contemporaneously herewith, Relator failed to serve a summons on Defendant, per the instructions in Fed. R. Civ. P. 4(c), and in so doing also failed to timely serve the Summons and Complaint within the 120 days deadline set forth in Fed. R. Civ. P. 4(m). Due to Relator's failure to serve the summons and effect process, Relator's Complaint is subject to dismissal pursuant to Fed. R. Civ. P. 12(b)(5) for ineffective service of process. For these reasons, SouthernCare respectfully requests that its Motion to Dismiss be GRANTED, that the Court enter an Order in the form attached hereto as Exhibit "A", and that the Court award SouthernCare attorneys fees and costs associated with this Motion to Dismiss.

Respectfully submitted this May 24, 2012.

s/ Stuart B. Harmon

Stuart B. Harmon (MB: 9553)

Andrew J. Stubbs (MB: 103280)

*Attorneys for Defendant,*

*Southern Care, Inc.*

OF COUNSEL:

Heidelberg Harmon PLLC

795 Woodlands Parkway

Suite 220

Ridgeland, MS 39157

Phone: (601) 351-3331

Fax: 601-956-2090

Rebekah N. Plowman (GA Bar No. 531044)

Kristen Pollock McDonald (GA Bar No. 388558)

R. Ross Burris, III (GA Bar No. 097433)

Nelson Mullins Riley & Scarborough, LLP

Atlantic Station

201 17<sup>th</sup> Street, NW, Suite 1700

Atlanta, GA 30363

Phone: (404) 322-6000

Fax: (404) 322-6050

*Attorneys for Defendant,*

*Southern Care, Inc.*

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## CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2012, a copy of the foregoing DEFENDANT SOUTHERNCARE INC.'S MOTION TO DISMISS RELATOR'S COMPLAINT UNDER FEDERAL RULE OF CIVIL PROCEDURE 12(b)(5) was filed with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record:

Michael S. MacInnis  
Rawlings & Macinnis, P.A.  
P.O. Box 1789  
Madison, MS 39130  
[tamreeves@bellsouth.net](mailto:tamreeves@bellsouth.net)

Alfred B. Jernigan, Jr.  
Edward O. Pearson  
U.S. Attorney's Office  
501 East Court Street  
Suite 4.430  
Jackson, MS 39201  
al.jernigan@usdoj.gov  
eddie.pearson@usdoj.gov

Rebekah N. Plowman (GA Bar No. 531044)  
Kristen Pollock McDonald (GA Bar No. 388558)  
R. Ross Burris, III (GA Bar No. 097433)  
Nelson Mullins Riley & Scarborough, LLP  
Atlantic Station

201 17<sup>th</sup> Street, NW, Suite 1700  
Atlanta, GA 30363

s/ Stuart B. Harmon

Stuart B. Harmon (MB: 9553)

Andrew J. Stubbs (MB: 103280)

*sharmon@heidelbergharmon.com*

*astubbs@heidelbergharmon.com*